

RECEIVED

Tony Fischer
Attorney at Law
2208 Anacapa Street
Santa Barbara CA 93105
Tel: 805-563-6784
fischlaw@cox.net
May 26, 2009

MAY 26 2009
3:40 pm BA
CITY CLERK'S OFFICE
SANTA BARBARA, CA

Mayor Marty Blum and Members of the City Council
City of Santa Barbara
City Hall at De La Guerra Plaza
Santa Barbara CA 93101

Re: Appeal Planning Commission's 3-1 vote
to approve project and modifications at
436 Corona Del Mar.

Dear Mayor Blum and Council Members:

Friends of Outer State Street appeals the Planning Commission approval to this proposed project and the proposed modification of the setback for this project. Friends of Outer State Street exists to promote and encourage good planning in the Outer State Street area and in other parts of the City. This appeal is based upon the following and the additional statements in the appeal from the Staff Hearing Officer decision.

This project is a clear example of one property owner seeking to change a neighborhood by excessive development.

- It is proposing a new three story project in a neighborhood which is primarily an area with two story buildings.
- It seeks a modification to the side yard setback to accommodate the oversized project. It is noted that the staff supported this oversized project in its staff report to the Staff Hearing Officer only to realize when the story poles were displayed, the staff's positive evaluation of the project was misguided and that it supported a project which was not appropriate. At the last minute, the Applicant made a slight reduction in height but the project continues to be out of scale with the size of the lot and neighborhood.
- The project violates the density limit in SBMC section 28.21.080C
- The project is not compatible with the neighborhood.
- Contrary to the Applicant's statements, it is not appropriate to build on or near the property lines when the zoning seeks to have open space along the lot lines. The neighborhood is not characterized by garages on lot lines. In fact, newer development in the neighborhood respects the setbacks and that pattern should continue.
- The project does not qualify for reduced setbacks allowed for narrower lots and the design is not appropriate.

- A smaller appropriate project will fit on this lot without waivers of recently adopted set back.

As a matter of application of the modification provisions in the zoning ordinance, there is no basis for granting a modification of the already minimal setbacks for new construction of a duplex on a 6,500+ square foot level lot. It is not necessary to secure the improvement and the proposed improvement is excessive. The property owner needs to pursue a design which conforms to the regulations and, because it is within the Coastal Zone, is compatible with the neighborhood. This development seeks to change the neighborhood.

The individual property owner and not the community benefits from this proposed reduction in setback. The lot is basically level and not unique. The direct result of the Planning Commission action is to encourage other property owners to ask for and to expect similar waivers. As a matter of policy and good planning, city officials respect setbacks and value the resulting open space regulations when approving new development. Zoning exists to provide consistency in regulation and an assurance to a property owner as to the potential development of adjacent property. The handing out of waivers or modifications should not be encouraged or supported.

Regarding the "justifications" for the modifications cited in the staff report, it is not good zoning practice to:

- (1) Suggest that a property owner has some right to reduced setbacks just because the building to be removed has non-conforming setbacks. The purpose of new regulations is to achieve development consistent with the new regulations.
- (2) Argue that under different circumstance (such as a lot 55 feet or narrower) the regulations would be different and therefore those regulations are more appropriate than the applicable regulations; or
- (3) To suggest use of regulations applicable in other circumstances to justify disregard for the applicable regulations.

This project does not meet the lot size requirements set forth in section 28.21.080 C of the Zoning Ordinance. That section sets forth the Lot Area and Frontage Regulations. Regarding existing lots which do not meet the minimum requirement of 14,000 square feet for new lots, it states:

"Existing Lots of 5,000 to 6,999 Square Feet. Existing lots of 5,000 to 6,999 square feet of net lot area, inclusive, may be used as a building site for two (2) dwelling units, **providing that all other regulations of the zone prescribed by this title are observed.**" (Emphasis added.)

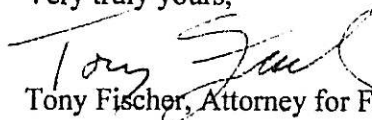
Friends-of Outer State Street would oppose, if pending, an application to modify the requirement of section 28.21.080 C. It is further noted that this section, as worded, is intended to

Appeal of 436 Corona Del Mar
By: Friends of Outer State Street
Date: May 26, 2009
Page: 3

preclude modifications for lots of this size. The language "providing that all other regulations of the zone prescribed by this title are observed" has no real meaning if this section is subject to modification. There would be no need for the language. The language should not, as a matter of interpretation, be treated as surplusage. To give it meaning, a modification should not be authorized.

During City hearings regarding the recent changes to setback regulations, it was suggested that the new regulations would reduce the need for processing modifications. What is happening, as evidenced by this proposed project, is that instead of proceeding under the relaxed rules, the developer is proposing a further reduction in the setback regulations and density limits applicable to this lot. By holding out the promise of staff support for modifications, the process encourages applications for modifications with the resulting increased staff work load. The staff report suggests that the side yard restrictions recently adopted should be modified project by project. In other words, the recent reduction in setback requirements adopted by the City Council, which was seen as a way to reduce the number of modifications, will not have that impact if the Planning Commission's decision is not reversed. It is further noted that at least one Commissioner's vote in favor was based in part upon considerations totally irrelevant to the issues pending before the Commission.

Very truly yours,



Tony Fischer, Attorney for Friends of Outer State Street

cc: Friends of Outer State Street